

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

MERRY MAIDS, L.P., :  
: Plaintiff : No. 4:05-CV-1614  
: vs. : (Complaint Filed 8/9/05)  
: GORDON HARVEY AND SANDRA : (Judge Muir)  
: HARVEY, :  
: Defendants :  
:

ORDER  
May 3, 2006

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

The procedural history of this case is set forth in prior orders of this court and we will not repeat that history other than as needed to address the pending matter. Defendants were served with the Complaint on August 11, 2005. After failing to respond to the complaint a default was entered by the Clerk on November 9, 2005. Along with the complaint Plaintiff filed a motion for a preliminary injunction. Defendants failed to respond to that motion and on October 4, 2005, we entered an order granting the motion.

On November 8, 2005, Defendant filed a motion for contempt in which it alleged that Plaintiffs had failed to comply with the order of October 4, 2005. After a contempt hearing held on December 14, 2005, and after receiving a proposed order from Plaintiff we issued an order on January 19, 2006, which, *inter alia*, required Defendants Gordon Harvey and

Sandra Harvey to return to counsel for Plaintiff Merry Maids various items, including all franchise manuals and items bearing Plaintiff's federally protected trademarks. The order also required Defendants to file a statement of compliance within 10 days. No such statement of compliance was timely filed.

On March 27, 2006, we issued an order in which we stated that "before we schedule a second contempt hearing against Defendants we will require the Plaintiff to file a status report regarding this case." On April 7, 2006, Plaintiff filed a status report which stated in relevant part as follows:

10. Defendants have not complied with the Court's January 19, 2006, Order. Although Defendants did return some written materials after January 19, 2006, the Defendants have not filed a Statement of Compliance, have not ceased using the Merry Maids' trademarks, and have not ceased using the telephone number associated with their former Merry Maids franchise.

The specific allegations are that Defendants "are using vacuum cleaners that bear the Merry Maids trademarks" and "several stickers located on Defendants' business premises contain the name Merry Maids." Furthermore, it was alleged the Defendants have used invoices which "contained the Merry Maids' trade name" and "the same telephone number used by Defendants in their former Merry Maids business." Also, Plaintiff claimed that Defendants have not disconnected the former Merry Maids telephone number but instead when that number is called all callers are directed to a new telephone number associated with Defendants' new business, "Miracle Maids."

The order of January 19, 2006, required Defendants to "return Merry Maids' franchise manuals and all items bearing Merry Maids' federally protected trademarks to counsel for Merry Maids" and to "file a statement of compliance with the court within 10 days." The order of January 19, 2006, did not specifically direct Defendants to disconnect the telephone number associated with the former Merry Maids franchise or remove all stickers bearing the Merry Maids' trademarks from Defendants' business premises. However, the order granting an injunction on October 4, 2005, directed Defendants to (1) cease using all of Merry Maids federal protected marks; and (2) cease using all telephone numbers associated with Defendants' former Merry Maids franchise.

On April 11, 2006, we issued an order scheduling a second contempt hearing for April 25, 2006. The following are the courts findings of fact relating to Defendants' compliance and noncompliance with the preliminary injunction order issued on October 4, 2005, and the order of January 19, 2006:

1. Defendants possess one broken vacuum cleaner which bears the Merry Maids trademark.
2. Affixed to a bookcase located on Defendants' business premises are many stickers stating "Compliments of merry maids."
3. On March 10, 2006, Defendants issued one invoice bearing the Merry Maids' tradename to Sherry Wright, a customer.

4. The invoice also contained the telephone number 570-389-9798 which is the same telephone number used by Defendants in their former Merry Maids business.

5. Defendants have not notified all of their customers that they are no longer associated with Merry Maids' franchise system.

6. Defendants have not completely discontinued use of the telephone number, 570-389-9798, used in their former Merry Maids' business.

7. Instead of completely discontinuing the use of that number, Defendants have placed a telephone message at that number that directs all callers to a new telephone number associated with Defendants' new business which is 570-389-1205.

8. The answering device message a number 570-389-1205 does not use the terms "Merry Maids" or "Miracle Maids."

In light of the above findings of fact, it is clear that Defendants have violated our orders of October 4, 2005, and January 19, 2006. Plaintiff was directed to file a statement of costs associated with the prosecution of the contempt hearing by May 2, 2006, but has failed to do so. We will find the Defendants in contempt and impose an appropriate sanction under the circumstances of this case.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendants Gordon Harvey and Sandra Harvey are held in contempt of our orders of October 4, 2005, and January 19, 2006.

2. Within 20 days of the date of this order Defendants shall remove the stickers affixed to a bookcase located on Defendants' business premises which state "Compliments of merry maids."

3. Within 20 days of the date of this order, Defendants shall dispose of the broken vacuum cleaner bearing the Merry Maids trademark.

4. Defendant shall immediately cease using any invoices bearing the Merry Maids name or the telephone number 570-389-9798.

5. Defendants shall immediately notify all of their customers that they are not associated with Merry Maids.

6. Defendants shall within 10 days contact the telephone company they utilize and direct that with respect to their former telephone number 570-389-9798 that the telephone feature or service which directs callers to their new telephone number, 570-389-1205, be discontinued.

7. Within twenty (20) days of the date hereof Defendants shall pay to the Plaintiff as a sanction, the costs associated with this proceeding, in the amount of \$100.00.<sup>1</sup>

8. Within 45 days of the date of this order Defendants shall file of record in the Clerk's Office a statement of compliance with this order.

9. Defendant Gordon Harvey is advised that failure to abide by this order shall result in the initiation of non-jury criminal contempt proceedings against him. The maximum penalty for such contempt is six months' imprisonment or a fine of \$5000.00, or both.

s/Malcolm Muir  
MUIR, U.S. District Judge

MM:gs

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1. We have limited the sanction to \$100 because the Plaintiff failed to file a statement of costs in accordance with our oral order issued on April 25, 2006.